



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 30, 1993

Ms. Georgia D. Flint  
Commissioner of Insurance  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78711

OR93-388

Dear Commissioner. Flint:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19656.

The Texas Department of Insurance (the "department") received a request for information concerning actuarial data submitted to the department by a specific company. Specifically, the request is for

a complete copy of the actuarial support underlying Med Pro's current rates for Physicians and Surgeons professional liability in Texas. This would include loss development data, trend analysis, exposures, expense assumptions, as well any other available supporting documentation.

Pursuant to section 7(c) we have also solicited a brief from Medical Protective Company of Indiana ("Med Pro"). The department sees no reason why the information should be excepted as a trade secret or proprietary information under section 3(a)(10). However, Med Pro contends that all of the bid proposals are excepted from disclosure by section 3(a)(10) as trade secrets, or alternatively, that section 3(a)(12) excepts the information from disclosure.

Section 3(a)(10) excepts from public disclosure either trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. This exception protects the property interests of third parties recognized by the courts. Open Records Decision No. 319 (1982). In *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert denied*, 358 U.S. 898 (1958), the Texas

Supreme Court adopted the Restatement of Torts definition of a trade secret. The following criteria determine whether information constitutes a trade secret:

(1) the extent to which the information is known outside [the owner's] business; (2) the extent to which it is known by employees and others involved in [the owner's] business; (3) the extent of measures taken by [the owner] to guard the secrecy of the information; (4) the value of the information to [the owner] and to [its] competitors; (5) the amount of effort or money expended by [the owner] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS, § 757 cmt. b (1939); *See also* Open Records Decision No. 552 (1990).

We must accept a claim that a document is excepted as a trade secret if a *prima facie* case for exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* Open Records Decision No. 592 (1991) at 2. A company or agency must show evidence of the efforts to keep information secret to qualify as a "trade secret" under section 3(a)(10). Open Records Decision Nos. 402 (1983), 255 (1980). Med Pro has not provided us with sufficient evidence of its efforts to keep the information confidential.<sup>1</sup> Therefore, we conclude that Med Pro did not establish a *prima facie* case that the information is a trade secret.

Alternatively, Med Pro claims that section 3(a)(10) excepts the information because it is commercial or financial in nature. However, Med Pro sets forth an argument under section 3(a)(10) that release of the information would cause substantial harm to them and impair the Department's ability to obtain the information in the future. We have specifically overruled that analysis of financial information under section 3(a)(10) in Open Records Decision No. 592 (1991). Commercial or financial information is excepted from disclosure only if it is deemed confidential by the common or statutory law of Texas. *Id.* at 7. The requested information is not confidential by statute, nor as discussed above, under the common law doctrine of trade secret. Therefore, section 3(a)(10) does not except the information from disclosure.

Med Pro argues that section 3(a)(12) excepts the information from disclosure because the information is "contained in a report prepared for the use of an agency

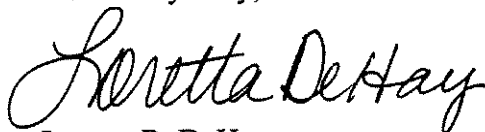
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<sup>1</sup> Uniqueness is not a requirement for the existence of a trade secret. Gonzales v. Samora, 791 S.W. 2d 258 at 263 - 264 (Tex. App. — Corpus Christi 1990, no writ).

responsible for the regulation and supervision of financial institutions." The department did not raise this exception, and under the Open Records Act, the department has the discretion to release information not deemed confidential by law. V.T.C.S. art. 6252-17a, § 3(c). Because we have determined that the requested information is not deemed confidential by law and the department did not raise this exception, we need not address the applicability of section 3(a)(12) in this ruling. See Open Records Decision No. 565 (1990). For these reasons, you must release the requested information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Opinion Committee

LRD/lmn/jmn

Ref.: ID# 19654  
ID# 19774  
ID# 19982  
ID# 20100  
ID# 20070

Enclosures: submitted documents

cc: Mr. Barry Senterfitt  
Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
2100 Franklin Plaza  
111 Congress Avenue  
Austin, Texas 78701  
(w/o enclosures)

Mr. John H. Mize ACAS, MAAA  
Tillinghast  
One Atlanta Plaza  
950 East Paces Ferry Road  
Atlanta, Georgia 30323-1119  
(w/o enclosures)